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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EASTMAN KODAK COMPANY,

Plaintiff,

v.

ALTEK CORPORATION,

Defendant.

Civil Action No. 12-cv-0246-DLC

Hon. Denise L. Cote

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ALTEK
CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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I. INTRODUCTION

A key term of the parties' Patent License Agreement ("PLA") is "open market price" which appears in Sections 1.13 and 4.14.¹ While the PLA does not define "open market price," the plain meaning and the four corners of the PLA unambiguously support and are consistent with Altek's interpretation of "open market price" as a "retail price" of a digital camera manufactured by Altek.

Unlike Altek's reasonable and consistent interpretation, Kodak's interpretation of "open market price," in addition to being contrary to the plain meaning, results in contradictions between material provisions of the PLA and renders Section 4.14's "Contract Assembly" exemption ineffective. As a result:

- 1) Altek's interpretation of "open market price" is the only reasonable interpretation;
- 2) Kodak's interpretation is not reasonable;
- 3) the interpretation of "open market price" is a question of law;
- 4) "open market price" is unambiguous because it only has one reasonable interpretation; and
- 5) extrinsic evidence may not be admitted because "open market price" is not ambiguous and such evidence would support contradictions within the PLA.

II. FACTUAL BACKGROUND

Altek is a Taiwanese manufacturer of digital cameras. Declaration of Alex Hsia in Support of Altek Corporation's Motion for Partial Summary Judgment ("Hsia Decl."), ¶ 3.

¹ Altek continues to dispute that the PLA is a valid and enforceable agreement, but for purposes of this motion, Altek will treat the PLA as though it is a binding contract between the parties. Altek does not waive its rights to contest the validity of the PLA.

Altek manufactures digital cameras for third parties. *Id.* Altek’s customers provide Altek with hardware specifications, proprietary software and firmware for the manufacture of their cameras. *Id.* Given the nature of Altek’s business, Altek never sells the same camera to more than one customer. *Id.* In addition, Altek very rarely sells cameras directly to consumers.² *Id.*, ¶ 4. Its customers, directly or through a chain, sell the cameras to consumers. *Id.* Kodak has been an Altek customer since 2002, and beginning in 2003, Kodak has been one of Altek’s major customers. *Id.*, ¶ 5.

In 2001, Kodak accused Altek of infringing its patents and demanded that Altek take a patent license. *Id.*, ¶ 6. Kodak threatened to cease all business with Altek if it did not enter into a license. Declaration of Morvarid Metanat in Support of Altek Corporation’s Motion for Partial Summary Judgment (“Metanat Decl.”), Exs. A & B. Fearing that it would lose Kodak’s business and ultimately go out of business, Altek entered into negotiations with Kodak to license Kodak’s patents. Hsia Decl., ¶ 7.

At the onset of these negotiations, Kodak drafted a license agreement which permitted Altek the use of its patents for the manufacture of digital cameras for third parties. Metanat Decl. Ex. K, §§ 1.14 & 3.1 and Ex. E at 40:14-41:18. These products are referred to as “OEM Licensed Products.” *Id.*, Ex. C, § 1.14; Ex. K, § 1.14.

Under the PLA, Altek is responsible for making royalty payments on all of its digital camera sales, with a few exceptions. *Id.*, §§ 4.10, 4.12 & 4.14. For instance, pursuant to Section 4.14 of the PLA, Altek is not required to make royalty payments on digital camera sales that fall within the “Contract Assembly” exemption, that is, where its “net sales” received are less than

² Altek only sells directly to a consumer where it manufactures an “Altek Branded Licensed Cameras.” “Altek Branded Licensed Products,” however, are not at issue in this litigation. Here, Kodak seeks royalties for “OEM Licensed Products.”

fifty percent of the “open market price.” *Id.*, § 4.14. “Open market price” refers to:

the “retail price” of a digital camera manufactured by Altek. The retail price refers to the price of the specific camera to a consumer in the “open market.”

Id., Ex. D at Third Suppl. Interrog. Resp. No. 7.

Kodak, as drafter and custodian of the PLA, added Section 4.14 to the PLA prior to its execution. *Id.*, Ex. E at 86:5-17; 89:17-90:20. Kodak did not include a definition of “open market price” in the PLA. *See generally id.*, Ex. C. Following Kodak’s inclusion of Section 4.14, and prior to executing the PLA, Altek made several attempts to confirm the meaning of this Section. *Id.*, Exs. F & G. In response, Kodak first stated that Section 4.14 was “self explanatory” and later “explained” that under the Section:

any product which Altek receives 50% or more in value to the market value of the product, is a royalty bearing licensed product and anything less than 50%, is a non-royalty bearing and unlicensed product.

Metanat Decl., Exs. F & H. It was not until August 26, 2011, that Kodak conveyed its interpretation to Altek—that “open market price” was the price for which Altek sold its manufactured cameras to its customers. *Id.*, Ex. I. Indeed, it is Kodak’s position, as stated in its verified Interrogatory Responses³, that “open market price” is the “price that Altek receives through a non-discounted, *arms-length* [sic] transaction” with its customers who then sell the cameras to consumers on the retail market. *Id.*, Ex. J at Interrog. Resp. No. 3 (emphasis added).

Kodak’s original draft of this license agreement also included the final version of Section

³ Kodak’s Objections and Responses to Altek’s July 6, 2012 Second Set of Interrogatories were verified by Timothy Lynch whereby Mr. Lynch certified that Kodak’s “answers are true and correct to the best of Kodak’s present knowledge, information, and belief.” Metanat Decl., Ex. J at 19.

1.13⁴ that provides guidance on the definition of “net sales” for use in calculating royalty payments under the PLA. *See id.*, Ex. K & Ex. E at 97:20-98:6; 99:5-17. Section 1.13 states the following:

(b)(1) In the case of an arms [sic] length sale or other disposal of an OEM Licensed Product ***Net Sales shall mean the total net revenue received by Altek and its Subsidiaries.***

and

(b)(2) In the case of a sale or disposal of an OEM Licensed Product which has not been sold in an arms [sic] length transaction, ***Net Sales shall mean Altek’s open market price for such OEM Licensed Product*** in the country of sale on the date when such sale occurred. . . .

Metanat Decl. Ex. C, § 1.13 (emphasis added).

Altek and Kodak signed the PLA on July 1, 2004 and July 14, 2004, respectively. *Id.* at 20; Hsia Decl., ¶ 8. On January 12, 2012, Kodak filed suit against Altek alleging breach of the PLA. ECF No. 1. The terms of the PLA are critical to the dispute; particularly the interpretation of “open market price.” On June 25, 2012, the Court allowed for discovery on the interpretation of “open market price” and permitted the parties to move for summary judgment on limited contract interpretation issues. ECF No. 36.

III. ARGUMENT

Altek’s interpretation of “open market price” is not only consistent with the term’s plain and ordinary meaning, it is consistent with all provisions of the PLA and does not create contradictions. Kodak’s interpretation, on the other hand, is not the plain and ordinary meaning and creates contradiction in the PLA. As there is only one reasonable interpretation, “open

⁴ Prior to its execution, the PLA went through various iterations. The provision referenced as Section 1.13 is numbered as such in the final, executed PLA, but may have been numbered differently in intervening drafts. *See* Metanat Decl., Ex. C.

market price” should be interpreted as the “retail price” of a digital camera manufactured by Altek. Summary judgment in favor of Altek is warranted.

A. Summary Judgment Is Appropriate To Determine The Plain Meaning Of Contract Terms

Under Federal Rule of Civil Procedure 56(a), summary judgment is appropriate if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once the moving party demonstrates that there is no genuine issue of material fact, the nonmoving party must designate “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 322-23. There is no genuine issue of material fact if “the evidence ... is of insufficient caliber or quantity to allow a rational finder of fact” to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986).

The non-moving party must do more than simply show there is some metaphysical doubt as to the material facts, and may not rely on conclusory allegations or unsubstantiated speculation. The mere existence of a scintilla of evidence in support of the [non-movant’s] position will be insufficient. Instead, the non-movant must offer concrete evidence from which a reasonable juror could return a verdict in his favor.

Ravenell v. Van der Steeg, No. 05 CIV 4042, 2007 WL 765716, at *3 (S.D.N.Y. Mar. 14, 2007) (quotations and citations omitted). In a contract dispute, summary judgment is appropriate to enforce the plain meaning of the contract. *Zolotar v. New York Life Ins. Co.*, 576 N.Y.S.2d 850, 852 (N.Y. App. Div. 1991); *DCMR v. Trident Precision Mfg.*, 317 F. Supp. 2d 220, 224 (W.D.N.Y. 2004).

When parties submit cross-motions, the Court must evaluate each motion on its own merits. *Ixe Banco, S.A. v. MBNA Am. Bank, N.A.*, No. 07 Cv. 0432 (LAP), 2009 U.S. Dist. LEXIS 89979, at *15 (S.D.N.Y. Sept. 29, 2009); *Heublein, Inc. v. United States*, 996 F.2d 1455,

1461 (2d Cir. 1993) (citations omitted).

B. “Open Market Price” Is Properly Interpreted As A Matter Of Law As A “Retail Price”

As a matter of law, the term “open market price” has only one reasonable interpretation—a “retail price” of a digital camera manufactured by Altek. The retail price refers to the price of the specific camera to a consumer in the “open market.”

1. Contract Interpretation Under New York Law

“[T]he initial interpretation of a contract ‘is a matter of law for the court to decide.’” *K. Bell & Assocs., v. Lloyd’s Underwriters*, 97 F.3d 632, 637 (2d Cir. 1996) (citation omitted); *W.W.W. Assocs., Inc. v. Giancontieri*, 566 N.E.2d 639, 642 (N.Y. 1990). The court’s role is to ascertain the parties’ intent at the time they entered into the contract. *Evans v. Famous Music Corp.*, 807 N.E.2d 869, 872 (N.Y. 2004). In contract interpretation, words and phrases referenced in the contract should be given their plain meaning. *Brooke Group Ltd. v. JCH Syndicate* 488, 663 N.E.2d 635, 638 (N.Y. 1996); *Int’l Multifoods Corp. v. Commercial Union Ins. Co.*, 98 F. Supp. 2d 498, 503 (S.D.N.Y. 2000). To the extent possible, the parties’ rights under a contract should be determined solely by the terms expressed in the four corners of the instrument itself. *S. Road Assocs., LLC v. Int’l Bus. Machines Corp.*, 826 N.E.2d 806 (N.Y. 2005); *County of Suffolk v. Alcorn*, 266 F.3d 131, 138 (2d Cir. 2001). Here, the plain and ordinary meaning of “open market price” as used within the four corners of the PLA establishes that only one reasonable interpretation of the term “open market price” exists—that is, a “retail price.”

2. The Plain Meaning Of “Open Market Price” Is “Retail Price”

The correct interpretation of “open market price” is its plain meaning—a “retail price.”

“Open market price” is the price of a product in an open market. An *open* market is a market that is available to *the public at large*—not just distributors. “Retail” is defined as “[t]he sale to the *public* of goods” 2 The New Oxford English Dictionary, 2571 (L. Brown, ed., 1993) (emphasis added). The “public” consists of any and all individuals. In other words, the “retail price” is the price of a camera to a consumer in the “open market.” As a general rule, courts enforce an agreement according to the plain meaning of its terms. *Signature Realty, Inc. v. Tallman*, 814 N.E.2d 429, 430 (N.Y. 2004).

3. A “Retail Price” Interpretation Provides Consistency And Effect To All Provisions Of The PLA, Including Sections 1.13 and 4.14

The four corners of the PLA also demonstrate that “open market price” means “retail price.” Indeed, a “retail price” is the only interpretation that is consistent with all provisions of the PLA, including Sections 1.13 and 4.14.

Pursuant to Section 4.10, Altek shall pay a royalty on all of the Digital Cameras it sells or transfers, except those cameras within an exemption, *i.e.*, Sections 4.12 or 4.14. Metanat Decl. Ex. C, §§ 4.10 & 4.14. The “Contract Assembly” provision of Section 4.14 exempts cameras from royalties where “the Net Sales collected or received by Altek for [digital cameras] is less than fifty-percent (50%) of the open market price. . . .” *Id.*, § 4.14.

a. The Definition Of “Net Sales” Under Section 1.13

Section 4.14 of the PLA cannot be applied without first determining the meaning of “net sales” under Section 1.13 of the PLA. Significantly, only Altek’s interpretation of “open market price” is consistent with Section 1.13 which includes the following definitions for “net sales”:

(b) OEM Licensed Product

(1) In the case of an arms [sic] length sale or other disposal of an OEM Licensed Product *Net Sales shall mean the total net revenue received by Altek and its Subsidiaries.*

and

(2) In the case of a sale or disposal of an OEM Licensed Product which has not been sold in an arms [sic] length transaction, *Net Sales shall mean Altek's open market price for such OEM Licensed Product* in the country of sale on the date when such sale occurred

Metanat Decl. Ex. C, § 1.13 (emphasis added).

Section 1.13(b)(1) defines “net sales” where Altek engages in an arm’s-length transaction. For Altek’s sales resulting from an arm’s-length transaction, “net sales” are the “net sales” received by Altek. *Id.*, Ex. C, § 1.13(b)(1).

Section 1.13(b)(2) defines “net sales” where Altek’s sales are *not* at an arm’s-length price to be the “open market price.” Metanat Decl. Ex. C, § 1.13(b)(2).

**b. A “Retail Price” Interpretation Provides Consistency
And Effect To All Provisions Of The PLA, Including
Sections 4.14 And 1.13**

The interpretation of “open market price” as “retail price” allows for consistent application throughout the PLA and does not create any contradictions. Under Section 4.14, cameras are exempted from royalties where Altek’s sales price is less than fifty percent of the “retail price.” Under Section 1.13, should Altek engage in a non-arm’s length transaction, the “net sales” are imputed up to the “open market price”—the “retail price.”

**(1) Altek’s Interpretation Gives Effect To Section
4.14**

Pursuant to Sections 4.14 and 1.13, when Altek engages in an arm’s-length transaction, it is responsible for royalty payments where the “net sales” it receives are more than fifty percent of the “open market price,” or as Altek interprets it, the “retail price.” Metanat Decl. Ex. C, §§

4.14, 1.13(b)(1). In other words, where Altek receives the majority of the revenues, or more than fifty percent of the “retail price,” Altek must pay royalties.

(2) Altek’s Interpretation Gives Effect To Section 1.13

Should Altek engage in a *non-arm’s length* transaction, Section 1.13(b)(2) automatically sets “net sales” to the “open market price,” or under Altek’s interpretation, the “retail price.” This results in the highest royalty base—the “open market price” or “retail price.” The “retail price” is an objective price. Accordingly, Section 1.13 bypasses any possible manipulation by non-arm’s length transactions, setting the royalty base at a non-manipulatable highest possible price. Altek’s interpretation gives the fullest effect to Section 1.13.⁵

C. Kodak’s Interpretation Fails As A Matter Of Law

Kodak interprets “open market price” as the price Altek receives through a “non-discounted, *arms-length* [sic] transaction.” Metanat Decl., Ex. J at Interrog. Resp. No. 3. Kodak’s interpretation equates “open market price” with the “arms-length” price. *Id.* Any price below the arm’s-length price (the “open market price”) is therefore, not arm’s-length. *Id.* Kodak asserted its interpretation of “open market price” on August 16, 2012, in response to Altek’s Second Set of Interrogatory Requests. *Id.*; Fed. R. Civ. P. 56(c)(1)(A).

As a matter of law, Kodak’s interpretation must be rejected because it is not the plain and ordinary meaning. Kodak’s interpretation also creates contradiction between material provisions

⁵ A “retail price” interpretation is consistent and reasonable in every instance “open market price” appears in the PLA. In addition to Sections 4.14 and 1.13(b) discussed above, applying a “retail price” definition to “open market price” as referenced in Section 1.13(a)(3) of the PLA is also reasonable. Under Section 1.13(a)(3), where Altek engages in an arm’s-length transaction of an “Altek Branded Licensed Product,” it is responsible for royalty payments only where the “net sales” it receives are more than fifty percent of the “open market price,” or as Altek interprets it, the “retail price.”

of the PLA and therefore, unreasonably violates the law that a construction must harmonize conflicting provisions and avoid inconsistency. Specifically, Kodak's interpretation results in incongruity between Sections 4.14 and 1.13 of the PLA, rendering Section 4.14 ineffective.

First, Kodak's interpretation of "open market price" is not the plain and ordinary meaning. *CCG Assocs. I v. Riverside Assocs.*, 556 N.Y.S.2d 859, 862 (N.Y. App. Div. 1990). "Open market price" says nothing about "discounts" or "arms-length transactions"—Kodak is reading terms into "open market price."

Second, Kodak's interpretation improperly creates contradictions between Sections 1.13(b)(2) and 4.14, rendering Section 4.14 ineffective, and violating the cannon of contract construction that an interpretation should avoid inconsistency and must not create contradictions.⁶ *James v. Jamie Towers Housing Co.*, 743 N.Y.S.2d 85, 87 (N.Y. App. Div. 2002); *Nat'l Conversion Corp. v. Cedar Building Corp.*, 246 N.E.2d 351, 354 (N.Y. 1969).

Pursuant to Section 4.14, Altek is exempt from paying royalties on digital cameras where Altek's "net sales" are below fifty percent of the "open market price." Metanat Decl. Ex. C, § 4.14. Under Kodak's interpretation of "open market price," where the "net sales" received by Altek are less than fifty percent of the price Altek receives through a "non-discounted, *arms-length* [sic] transaction," Section 4.14 should exempt the cameras from royalties. *See id.*, Ex. J at Interrog. Resp. No. 3. By Kodak's definition, however, where Altek's received "net sales" are less than the "open market price," (as they must be to qualify for exemption under Section 4.14) the transaction cannot be an arm's-length transaction. As Kodak has repeatedly stated, the "open market price" is the "arm's length" price, *i.e.*, they are one and the same. *Id.*, Ex. E at 116:7-9

⁶ Notably, Kodak attempts to rely on these two provisions in support of its interpretation of "open market price," despite the fact that its interpretation renders the provisions irreconcilable.

(“open market price is always an arm’s length sale price in a given market.”).⁷ Where a transaction is not at the arm’s-length price, Section 1.13(b) applies:

in the case of a sale or disposal of an OEM Licensed Product which has not been sold in an arms-length [sic] transaction, Net Sales shall mean Altek’s open market price” for such OEM Licensed Product

Metanat Decl. Ex. C, § 1.13(b)(2). Under Kodak’s interpretation, then, Altek’s “net sales” could never be “less than fifty-percent (50%) of the open market price” because Section 1.13(b)(2) automatically increases the “net sales” to be the same as the “open market price.”

For example, applying Kodak’s interpretation, if Altek sold a camera where Altek’s “net sales” were less than fifty percent of the “open market price,” Altek should benefit from the Section 4.14 exemption. Because the transaction price is less than the “open market price,” however, Kodak’s interpretation negates Section 4.14 because Section 1.13(b)(2) resets Altek’s “net sales” to the “open market price.” Altek loses the Section 4.14 exemption because its “net sales” now equal the “open market price.” Altek could never obtain the Section 4.14 exemption; the Section 4.14 exemption is ineffective. Such an interpretation should be rejected. *Isaacs v. Westchester Wood Works, Inc.*, 718 N.Y.S.2d 338 (N.Y. App. Div. 2000) (an interpretation that has the effect of rendering at least one clause superfluous or meaningless is not preferred and should be avoided if possible); *see also Bestform, Inc. v. Herman*, 804 N.Y.S.2d 80 (N.Y. App. Div. 2005) (a court should construe an agreement to avoid a result that is commercially unreasonable).

D. Altek’s Interpretation Of “Open Market Price” Is The Only Reasonable Interpretation

Unlike Kodak’s interpretation, applying a “retail price” definition to “open market price,”

⁷ *See also, id.*, Metanat Decl. Ex. E at 119:12-15; 121:19-22; 124:19-25; 126:4-5; 146:19-21; 190:21-191:7; 222:8-13.

is reasonable, consistent, and fair throughout the PLA—including Sections 1.13(b) and 4.14. *Sutton v. E. River Sav. Bank*, 435 N.E.2d 1075, 1078 (N.Y. 1982). Indeed, general canons of contract construction require that when two conflicting provisions can be reconciled, a court is required to do so and give effect to both. *HSBC Bank USA v. Nat’l Equity Corp.*, 719 N.Y.S.2d 20 (N.Y. App. Div. 2001); *Seabury Constr. Corp. v. Jeffery Chain Corp.*, 289 F.3d 63, 70 (2d Cir. 2002). Altek’s interpretation complies with the general canon that terms have the same meaning throughout the document. *Maryland Cas. Co. v. W.R. Grace and Co.*, 128 F.3d 794, 799 (2d Cir. 1997). Altek’s interpretation gives “open market price” the same interpretation in Sections 1.13 and 4.14, all the sections where “open market price” appears. Altek’s interpretation is also the plain and ordinary meaning. *American Express Bank Ltd. v. Uniroyal, Inc.*, 562 N.Y.S.2d 613, 614 (N.Y. App. Div. 1990); *CCG Assocs. I*, 556 N.Y.S.2d at 862 (a court should enforce the plain meaning of an agreement rather than rewrite it).

Altek’s is the only interpretation that gives “full meaning and effect” to all provisions of the PLA, including Sections 4.14 and 1.13. Under New York law, an interpretation that gives a reasonable and effective meaning to all the terms of the contract is preferable to one that leaves a part unreasonable or of no effect. *Ruttenberg v. Davidge Data Sys. Corp.*, 626 N.Y.S.2d 174, 177 (N.Y. App. Div. 1995); *Rothenberg v. Lincoln Farm Camp, Inc.*, 755 F.2d 1017, 1019 (2d Cir. 1985). For example, applying Altek’s interpretation, where the “net sales” received by Altek are more than fifty percent of the “retail price” of a camera, Section 4.14 would not apply to exempt the payment of royalties. Where, however, Altek’s received “net sales” are less than fifty percent of the “retail price,” the cameras are exempt under Sections 4.14 and 1.13.⁸ A “retail price” definition of “open market price” is the only interpretation that is reasonable,

⁸ To the contrary, under Kodak’s interpretation of “open market price,” Section 4.14 could never apply to exempt Altek from royalties, regardless of the circumstance.

consistent, and fair throughout the entire PLA. *Sutton*, 435 N.E.2d at 1078.

E. Kodak Cannot Demonstrate Issues Of Material Fact With Respect To The Interpretation Of “Open Market Price”

As Altek has established, the only reasonable interpretation of “open market price” is “retail price.” Conversely, Kodak’s interpretation of “open market price” creates contradictions within the PLA and is unreasonable.

1. “Open Market Price” Is Unambiguous

It is well settled that if a contract admits only one reasonable interpretation, it is unambiguous and will be enforced as written as a matter of law. *K. Bell & Assocs.*, 97 F.3d at 637; *Third Ave. Trust v. SunTrust Bank*, 166 F. Supp. 2d 783, 787 (S.D.N.Y. 2001). Kodak has failed to establish a competing, reasonable interpretation of “open market price”; its interpretation creates unreasonable contradictions amongst the PLA’s provisions and unreasonably renders Section 4.14 ineffective. *See supra* Part III.C. As the only reasonable interpretation of “open market price” is a “retail price,” “open market price” is not ambiguous. *Readco, Inc. v. Marine Midland Bank*, 81 F.3d 295, 299 (2d Cir. 1996) (citing *Mandelblatt v. Devon Stores, Inc.*, 521 N.Y.S.2d 672, 675 (N.Y. App. Div. 1987)). Where a contract is unambiguous, it must be interpreted according to its plain meaning. *CCG Assocs. I*, 556 N.Y.S.2d at 862.

2. As “Open Market Price” Is Unambiguous, Extrinsic Evidence Is Not Permitted To Aid In Its Interpretation

Where a term is unambiguous, extrinsic evidence is inadmissible to aid in its interpretation. *Int’l Multifoods*, 98 F. Supp. 2d at 505. Moreover, the parties are precluded from introducing extrinsic evidence in an attempt to *create* an ambiguity in the agreement. *W.W.W. Assocs.*, 566 N.E.2d at 643 (permitting a party to introduce extrinsic evidence to rewrite a

bargain that has already been struck “unnecessarily denigrates the contract and unsettles the law.”). Ambiguity is determined within the four corners of the document; it may not be created by extrinsic evidence that the parties intended a meaning different than that expressed in the agreement. *Innophos, Inc. v. Rhodia, S.A.*, 882 N.E.2d 389, 391 (N.Y. 2008). Therefore Kodak may not enter extrinsic evidence to support its interpretation of “open market price.”

In addition, Kodak may not introduce extrinsic evidence in support of its interpretation because that interpretation creates contradictions amongst provisions of the PLA. *A.H.A. Gen. Constr. v. New York City Hous. Auth.*, 92 N.Y.2d 20 (1998) (extrinsic evidence cannot “be introduced to alter, vary, or contradict the clear and unambiguous terms.”); *Tobin v. Union News Co.*, 239 N.Y.S.2d 22 (N.Y. App. Div. 1963) (extrinsic evidence “may be shown for the purpose of elucidation but not for contradiction or modification.”).

IV. CONCLUSION

For the foregoing reasons, the Court should grant Defendant’s Motion for Partial Summary Judgment on the interpretation of “open market price.”

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